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HUMAN RIGHTS COMMITTEE

Fifty-sixth session

SUMMARY RECORD OF THE 1493rd MEETING

Held at Headquarters, New York,
on Friday, 29 March 1996, at 3 p.m.

Chairman: Mr. AGUILAR

later: Mr. EL-SHAFEI
(Vice-Chairman)

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The meeting was called to order at 3.15 p.m.

GENERAL COMMENTS OF THE COMMITTEE (continued)

Draft general comment on article 25 of the Covenant (continued)
(CCPR/C/53/CRP.1)

Paragraphs 24, 25 and 26

1. Ms. EVATT introduced paragraphs 24, 25 and 26, of the comment recommended by the Working Group which dealt with issues related to article 25 of the Covenant, specifically freedom of expression (article 19), freedom of association (article 21) and freedom of assembly (article 22). The Committee's previous comments on those articles, which related to rights vital to the democratic process had been too general.

2. Paragraph 24 dealt with the free communication of information and ideas as well as the content of reports describing measures promoting and protecting that right in the context of article 25. Paragraph 25 dealt with the right to freedom of association and the responsibility of political parties under article 25.

3. Paragraph 26 dealt with freedom of assembly as provided for in article 22, participation in elections as protected by article 25, and the requirement that States report on the status of political parties and non-governmental organizations in the conduct of public affairs.

4. Lord COLVILLE indicated that paragraphs 25 and 26 seemed to be more relevant to article 22 of the Covenant than to article 25.

5. Mrs. CHANET felt that the ideas in paragraphs 24 to 26 pertained to article 25, but they would carry more weight and the text of the draft general comment would be more readable and logical if the salient points were inserted at appropriate places in preceding paragraphs of the general comment.

6. Ms. EVATT said that she was certainly willing to take the main points from paragraphs 24 to 26 and insert them earlier in the text, but felt it would be helpful to have a short discussion on the individual paragraphs first. The important ideas concerning political parties in paragraph 26 had been partially discussed earlier but merited further discussion.

7. The CHAIRMAN, speaking in his personal capacity, said that he preferred to keep paragraphs 24-26 separate, since the points they made were closely linked to the provisions of article 25.

8. Mr. EL-SHAFEI said that since articles 19, 21 and 22 of the Covenant were closely related to article 25, the general comment on article 25 should embrace freedom of expression and assembly. The paragraphs could be revised to make them seem less out of context.

9. Mr. BÁN suggested that another solution would be for the Committee not to insert paragraphs 24-26 in the general comment on article 25, but to reserve those important rights for comments on articles 19, 21 and 22, which had been identified as priorities by the Working Group on article 40.

10. Mr. KLEIN tended to support retaining the format for a practical reason namely, the difficulty of inserting those ideas elsewhere and reformulating the text.

11. Ms. EVATT pointed out that paragraph 24 dealt with the free communication of information and ideas about public and political issues, the importance of a free press and the right to engage in political activity, especially during election campaigns. It went on to deal with the obligation of the State party to report on freedom of expression as it related to article 25 and to provide information on the role of the media in the political process, access to public broadcast time, the limit to be imposed on political expenditure and measures to ensure fair and equal access to the media.

12. Mr. EL-SHAFEI felt that the paragraph should begin with the clause "In order to enjoy the rights enshrined in article 25, especially parts (a) and (b)". In that way, paragraph 24 would be tied into what had been said previously in the text about the conduct of public affairs. The second part of the paragraph on the need to report could be reserved for a general comment on article 19.

13. Lord COLVILLE felt that much of what was said in paragraph 24 was repeated in paragraph 26. He suggested that references to the financing of elections (including amount of broadcast time) did not really relate to freedom of expression and could be grouped together so as to deal with that issue more efficiently.

14. Mr. LALLAH suggested re-numbering the paragraphs: "Issues related to article 25" would be the title for paragraph 24, and the present paragraphs 24, 25, 26, 27 would become 24 (1)(2)(3)(4). He agreed that access to broadcast time was more a question of freedom of expression than of association. He wondered whether subsidies to parties and associations belonged under substantive rights. Limiting contributions certainly belonged under freedom of expression.

15. Mr. KLEIN considered that the last two sentences of paragraph 24 were not really related to article 25, and could therefore be deleted.

16. Mr. BÁN agreed with Mr. Klein, and added that the phrase "without unreasonable restriction" in paragraph 24 merely quoted the Covenant. He suggested that a general comment should add something more concrete, as, for example, a reference to the deadline for terminating the campaign before election day.

17. Mr. MAVROMMATIS held the view that the Committee should confine itself to statements of general principles.

18. Ms. EVATT agreed that the last two sentences of paragraph 24 should be deleted, but the important points about States parties' reports should be included in connection with the consideration of article 19. She suggested that paragraph 24 should open with the clause "the full exercise and enjoyment of rights under article 25 requires the free communication etc.", and agreed that the phrase "without unreasonable restriction" should be deleted. References to political parties and criticism of the Government and of political opponents could be inserted elsewhere and the question of providing subsidies to political parties could be dealt with separately.

19. Mr. BRUNI CELLI stated that in many countries one of the major problems in elections was that there was no limit placed on spending on political propaganda. Consequently some groups enjoyed special advantages. For example, the party in power could draw on almost unlimited resources or even use government funds and offices for its own political purposes. He was not sure, therefore, how far the Committee should go in eliminating such considerations from paragraph 24.

20. The CHAIRMAN, speaking in his personal capacity, said that while most of the Committee appeared to be in favour of removing the last two sentences of paragraph 24, it would be wiser to refer a final decision until a later meeting when the necessary quorum was present.

21. Ms. EVATT introduced paragraphs 25 and 26 of the draft general comment on article 25, which related to freedom of association, on issue which the Committee had not yet dealt with in detail. The first sentence was a general statement of the importance of the right of freedom of association. The second and third sentences dealt with the need for political parties to operate internally in a democratic manner. It might be useful to add a statement to the effect that the laws concerning freedom of association should ensure that appropriate standards were maintained by political parties in their internal management.

22. Ideas touched upon earlier in the draft general comment were reiterated and emphasized in paragraph 26. The last part of the paragraph could be deleted, however, to avoid redundancy.

23. Mr. El-Shafei, Vice-Chairman, took the Chair.

24. Mr. KRETZMER said that, since general comments were directed to States parties, the Committee could not make a general statement regarding political parties, since they were voluntary groups and not agents of the State. While some countries regulated the internal mechanisms of political parties, others did not, and he questioned whether the Committee should encourage such regulation. In his view, the text should focus on the State party.

25. Lord COLVILLE said that the second sentence of paragraph 26 repeated a point regarding restriction of expenditure that had already been covered in paragraph 17, and accordingly should be deleted.

26. Mr. FRANCIS said that the concept that political parties should be managed democratically was crucial to an understanding of paragraph 25, and in his view,

the Committee should produce a text which would make clear what it expected from local institutions.

27. Mr. BRUNI CELLI said that the general comments were intended to guide States in implementing the Covenant. Political parties were one of the weakest links in democratic regimes, as demonstrated by single party systems where membership was not voluntary and party members ruled from the top down. Organizations naturally tended to create hierarchies, and it was a struggle to maintain internal democracy in political parties.

28. Mr. BÁN said that in the first sentence of paragraph 26, the word "office" might be seen to impose an inappropriate restriction on elections for military or police offices, and should therefore be revised.

29. Mr. BHAGWATI thought that the last section of paragraph 25 was extremely relevant and useful in addressing the problem of the absence of internal democracy in political parties.

30. Mrs. CHANET suggested that a small drafting group should be formed to review the text and consolidate related concepts.

31. Mr. KRETZMER said that he had no problem with the text on the merits, but wondered how the Committee could put it into practice. He suggested that, in the last sentence of paragraph 25, the words "political parties" should be replaced by "States", and the words "of political parties" should be inserted after "internal management".

32. Mr. BHAGWATI agreed that the State party should be made responsible for the actions of political parties. With regard to campaign advertising, he noted that some countries placed limits on expenditure for that purpose only on the candidate as an individual, not on his party. Since funding from business and other groups was not always transparent, a requirement for making public all sources of campaign funding should be added.

33. Mr. LALLAH agreed with Mr. Bhagwati on the need for greater transparency in respect of campaign contributions. Since various special interest lobbies, corporations and even drug traffickers often made major contributions in the expectation of exercising control over the persons they had helped to elect, it was imperative to control or limit expenditure by political parties as well as individuals.

34. Ms. EVATT said that the Committee appeared in agreement on deletion of the last two sentences of paragraph 24 to avoid repetition. The last sentence of paragraph 25 should specify that it was the State party's responsibility to ensure that political parties respected the principle stated in article 25.

35. She endorsed Mr. Ban's proposal to delete the first sentence in paragraph 26. Indeed, the whole of paragraph 26 should be deleted.

36. Mr. BHAGWATI suggested that in order to ensure transparency in funding, paragraph 25 should also obligate States parties to require that political

parties disclose the source of contributions they received from individuals, corporations and organizations.

37. Mr. LALLAH said that States parties should require more than transparency from political parties. He proposed to include the idea that they should ensure that the will of the electorate prevailed earlier in the text in connection with the discussion of the will of the people.

38. Lord COLVILLE said there was a limit to what the Committee could demand that States parties require of political parties. He agreed that States parties should ensure that the multi-party system functioned, provide a subsidy for opposition parties, enforce the fair distribution of air time during electoral campaigns, prohibit the buying of votes and perhaps even put an overall limit on the amount spent on campaigns. There certainly should be judicial recourse in case of electoral abuses. However, it would not be appropriate for the Committee to suggest that States parties require all political parties to publish the source of every single contribution or publicize amounts spent on research, party conferences and other activities which had nothing to do with electoral campaigns. He believed the introduction of such restrictions would give rise to considerable controversy. It was unrealistic to expect a State party to require that every political party function internally in a democratic manner.

39. Mr. BRUNI CELLI believed that it was the obligation of the State party to ensure that the financing of an electoral campaign and of the operation of political parties did not distort the democratic process. He endorsed the proposal to suggest to States parties that they supervise not only the funding of electoral campaigns, but also the financing of political parties during non-election periods.

40. Mr. FRANCIS endorsed the approach of Mr. Lallah and Mr. Bhagwati, adding that the emphasis should be placed on the sources of the funding of political parties.

41. Mr. KLEIN, supporting Lord Colville's view, said that he was reluctant to include that complex question in the draft general comment.

42. Mr. LALLAH said that he was not suggesting that State parties require political parties to publish amounts received from various sources throughout the entire life of the political party, but simply that since there was a limit on the expenditures of candidates, there should also be a limit on the expenditures of political parties.

43. Mr. BHAGWATI said that a limit on expenditures of political parties would act as a healthy check on their spending for purposes that distorted the democratic process. Only by limiting the expenditures of political parties could the expression of the free will of the people be protected.

44. Mr. MAVROMMATIS agreed with Lord Colville and Mr. Klein that there was a limit to the provisions the Committee should include in a draft general comment. While States parties should ensure that elections were free of practices that might cast doubt on their fairness, it would be difficult to determine and

enforce a reasonable limit on expenditures of political parties and meaningless to introduce a provision that required States parties to do so.

45. Ms. EVATT said that the question of limits on expenditures was already adequately addressed in paragraph 17 of the draft comment. She proposed that the Committee adopt the first half of paragraph 24 and paragraph 25 as amended subject to revision. She said that the first sentence of paragraph 26 was repetitious and should be deleted and that the remainder of the paragraph should be dealt with when the Committee discussed article 22 in detail.

46. The CHAIRMAN took it that the Committee wished to adopt paragraphs 24, 25 and 26 subject to revision as proposed by Ms. Evatt.

47. Paragraphs 24, 25 and 26 were adopted as amended.

Paragraph 27

48. Ms. EVATT introduced paragraph 27 of the draft general comment on article 25, which dealt with the limits on the exercise of the right established in that article. Paragraph 27 stressed that the exercise of the right established in article 25 could not be used to suppress other rights and freedoms protected under the Covenant, an idea based on article 5 of the Covenant, which provided that no interpretation of any provision of the Covenant could be used to destroy any of the other rights and freedoms established in the Covenant.

49. Mr. BÁN endorsed the text of paragraph 27 and proposed to include in the paragraph the request that States parties in their reports should specify which restrictions of the rights and freedoms protected under article 25 existed in law and in practice in their countries.

50. Mr. LALLAH fully endorsed the draft of paragraph 27.

51. Mr. BRUNI CELLI said that he had some concerns about how paragraph 27 might be applied in situations in which, for example, a political party sought to deny certain groups the right to participate in the electoral process or, alternatively, called upon persons to refrain from participating in the process.

52. Ms. EVATT said that it was often difficult with regard to using one's rights in order to deny the rights of others, to pinpoint exactly when the boundary of acceptability was crossed. In her view, that boundary was not crossed when, for example, individuals or groups called upon others to refrain from voting. It was crossed, however, when they called for certain groups to be denied the right to vote. On the other hand, she was uncomfortable with Mr. Bán's suggestion that States' compliance in that area should be included in their reporting responsibilities. States should be requested to report only on the measures which they had taken to prevent the abuse of the rights protected by article 25 of the Covenant.

53. The CHAIRMAN said that he took it that the Committee accepted Ms. Evatt's suggestion for amending paragraph 27.

54. Paragraph 27, as orally amended, was adopted.

Paragraph 21 (continued)

55. The CHAIRMAN invited the Committee to resume its consideration of draft paragraph 21.

56. Ms. EVATT said that to allay the concerns voiced by some members, she wished to propose that the sentence "It is of particular importance to ensure that there is no discrimination on the ground of political opinion" should be replaced by "It is of particular importance to ensure that persons holding public service positions do not suffer discrimination solely on the basis of their political opinions".

57. The CHAIRMAN asked whether it would be advisable to retain the word "solely" in the proposed new sentence.

58. Mr. KLEIN said that he supported the wording proposed by Ms. Evatt because senior civil servants were often dismissed from their jobs by the incoming government solely on account of their political opinions.

59. Ms. EVATT said that the use of the word "solely" was intended not to validate discrimination on other prohibited grounds but rather to focus attention on preventing discrimination in the public service on the grounds of differences of political opinion.

60. Mr. MAVROMMATIS said that he would prefer to omit the word "solely" to avoid any possible implication that it would be acceptable to discriminate on other grounds.

61. Mr. KLEIN, supported by Ms. EVATT, said that he had no real objection to the deletion of the word "solely". It was more important that the record should reflect the Committee's common understanding of what was meant.

62. Paragraph 21, as orally amended, was adopted.

63. The draft general comment on article 25 as a whole, as orally amended, was adopted.

The meeting rose at 5.40 p.m.